

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Michael E. Harris, et al,  
Complainants,  
vs.

**FINDINGS OF FACT,  
CONCLUSIONS AND  
ORDER**

Gary P. Ruehmann,  
Respondent.

The above-entitled matter was scheduled for an evidentiary hearing on June 7, 2005, before a panel of three Administrative Law Judges: Steve Mihalchick (Presiding Judge), Beverly Jones Heydinger, and Kathleen Sheehy. Pursuant to a settlement agreement reached by the parties, the panel made its determination based on the record and the Respondent's affidavit and admissions. No separate evidentiary hearing was held. The hearing record closed on June 7, 2005.

**NOTICE**

Pursuant to Minn. Stat. § 211B.36, subd. 5, this is the final decision in this case. Under Minn. Stat. § 211B.36, subd. 5, a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

**STATEMENT OF THE ISSUES**

1. Did Respondent violate Minn. Stat. § 211B.04, by failing to put a disclaimer on campaign material he distributed?

The panel concludes that the Respondent did violate Minn. Stat. § 211B.04.

2. Did Respondent violate Minn. Stat. § 211B.06, which prohibits the dissemination of false campaign material?

The panel concludes that Respondent did not violate Minn. Stat. § 211B.06.

3. What remedy, if any, is appropriate?

The agreed upon penalty is appropriate.

Based upon the record and proceedings herein, the undersigned panel of Administrative Law Judges makes the following:

## FINDINGS OF FACT

1. Respondent is a resident of Dead Lake Township, Minnesota.<sup>[1]</sup>
2. On March 5, 2005, three days before the Township's annual election, Respondent mailed a bundle of postcards to residents of Dead Lake Township urging them to vote against a ballot initiative to increase the size of the Township board from three members to five members.<sup>[2]</sup> The postcards stated the following:

### The Plain Truth

FACT: 39 Townships Boards have 5 Supervisors In Minnesota.

FACT: The largest, Grand Rapids, has 11,778 people, the smallest, Bancroft, has 1,030. No townships under 1,000 have a 5 Supervisor Board.

FACT: All 39 Townships have Comprehensive Land Use Plans "Zoning!"

BEFORE YOU VOTE "YES". Think long and hard. We may well be playing into some "Special Interest Groups" long-range plans.

We know we can elect *one new Supervisor in 2006*, The challenge is can we elect 3 new supervisors in 2006?

THINK ABOUT THAT before you vote March 8<sup>th</sup>!

Then vote NO for two additional supervisors.

Don't Let Dead Lake Change.

*"Better the devil you know than the devil you don't."*<sup>[3]</sup>

3. The postcards contained no disclaimer identifying the person or committee responsible for disseminating the material.
4. The return address on the postcards was listed as "39109 County Hwy 35, Dent, Minnesota." There is no such address in Dent, Minnesota; however, Ann and Jaclyn Leverentz live at 39109 Beaver Dam Road in Dent, Minnesota. Because their street number was the same as that listed on the postcard's return address, they received several telephone calls from residents of Dead Lake Township inquiring about the postcard. Ann and Jaclyn Leverentz had no involvement in the preparation or dissemination of the postcards and were upset by the telephone calls.<sup>[4]</sup>
5. The Township's annual election took place on March 8, 2005. The ballot question asked, "Shall Option A, providing a five-member town board of supervisors, be adopted for the government of the town?"
6. On April 28, 2005, Michael Harris and approximately 20 other persons filed a complaint with the Office of Administrative Hearings alleging that Gary Ruehmann distributed the postcards in violation of Minn. Stat. §§ 211B.04 and 211B.06.
7. On April 29, 2005, Administrative Law Judge George Beck determined that the complaint set forth a prima facie violation of Minn. Stat. §§ 211B.04 and 211B.06, and that an evidentiary hearing should be conducted.

8. On June 6, 2005, the parties entered into a settlement agreement wherein the Respondent admitted that he disseminated the postcards and failed to include a disclaimer as required by Minn. Stat. § 211B.04. The Respondent further admitted that he knew the postcards contained a false return address and he apologized for any inconvenience the mailing caused Ann and Jaclyn Leverentz. Finally, the Respondent agreed to pay a civil penalty in the amount of \$125.<sup>[5]</sup>

9. In light of the settlement agreement, the parties requested that the evidentiary hearing be cancelled and that the Panel issue its decision based on the record and the admissions of the Respondent.

10. On June 7, 2005, the panel met and considered the record, including the written submissions of both parties.

Based upon the foregoing Findings of Fact, the undersigned panel of Administrative Law Judges makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judges are authorized to consider this matter pursuant to Minn. Stat. § 211B.35.

2. Minn. Stat. § 211B.01, subd. 2, as amended in 2004, defines "campaign material" to mean "any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election, except for news items or editorial comments by the news media."<sup>[6]</sup>

3. Minn. Stat. § 211B.04, as amended in 2004, provides in relevant part, as follows:

(a) A person who participates in the preparation or dissemination of campaign material other than as provided in section 211B.05, subdivision 1, that does not prominently include the name and address of the person or committee causing the material to be prepared or disseminated in a disclaimer substantially in the form provided in paragraph (b) or (c) is guilty of a misdemeanor.

(b) Except in cases covered by paragraph (c), the required form of disclaimer is: "Prepared and paid for by the ..... committee, .....(address)" for material prepared and paid for by a principal campaign committee, or "Prepared and paid for by the ..... committee, .....(address), in support of .....(insert name of candidate or ballot question)" for material prepared and paid for by a person or committee other than a principal campaign committee.

\* \* \*

(f) This section does not apply to an individual or association who acts independently of any candidate, candidate's committee, political committee, or political fund and spends only from the individual's or association's own resources a sum that is less than \$500 in the aggregate to produce or distribute campaign material that is

distributed at least seven days before the election to which the campaign material relates.

4. The postcards disseminated by the Respondent were “campaign material” within the meaning of Minn. Stat. § 211B.01, subd. 2.

5. The Respondent violated Minn. Stat. § 211B.04(b) by failing to have the required disclaimer identifying himself and his correct address on the postcards. The exemption provided in Minn. Stat. § 211B.04(f) does not apply to the Respondent because he distributed the postcards less than seven days before the election.

6. Minn. Stat. § 211B.06, subd. 1, provides, in part:

A person is guilty of a gross misdemeanor who intentionally participates in the preparation, dissemination ... of ... campaign material with respect to the personal or political character or acts of a candidate, or with respect to the effect of a ballot question, that is designed or tends to elect, injure, promote, or defeat a candidate for nomination or election to a public office or to promote or defeat a ballot question, that is false, and that the person knows is false or communicates to others with reckless disregard of whether it is false.

7. The Respondent did not violate Minn. Stat. § 211B.06 by placing a false return address on the postcards. The false address is not campaign material “with respect to the effect of a ballot question” nor was the false address designed to defeat the ballot question. Rather, the false address is more accurately viewed as part of the disclaimer violation.

8. Pursuant to Minn. Stat. § 211B.35, subd. 2, the panel of Administrative Law Judges may impose a civil penalty of up to \$5,000 for any violation of chapter 211A or 211B.

Based on the record herein, and for the reasons stated in the following Memorandum, the panel of Administrative Law Judges makes the following:

## **ORDER**

IT IS HEREBY ORDERED:

That Respondent pay a civil penalty of \$125 by July 8, 2005, for violating Minn. Stat. § 211B.04.<sup>[7]</sup>

Dated: June 9, 2005

/s/ Steve M. Mihalchick

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STEVE M. MIHALCHICK  
Presiding Administrative Law Judge

/s/ Beverly Jones Heydinger

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BEVERLY JONES HEYDINGER  
Administrative Law Judge  
/s/ Kathleen D. Sheehy

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KATHLEEN D. SHEEHY  
Administrative Law Judge

## **MEMORANDUM**

Campaign material is defined to mean “any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election, except for news items or editorial comments by the news media.”<sup>[8]</sup> Campaign material is required, under Minn. Stat. § 211B.04 (a) and (b),<sup>[9]</sup> to include a disclaimer identifying the name and address of the person or committee that prepared or disseminated the material. The Respondent admits that he disseminated the postcards at issue in this matter without the disclaimer required by Minn. Stat. § 211B.04.

The Panel concludes that Respondent’s violation of Minn. Stat. § 211B.04 was deliberate, particularly in light of the false return address. However, the Panel notes that the Respondent has accepted responsibility for his actions, acknowledged the violation, and apologized for any inconvenience the mailing caused Ann and Jaclyn Leverentz. In addition, there is no evidence in the record suggesting that the violation influenced the outcome of the election. In light of all of this, the Panel concludes that the civil penalty of \$125 agreed to by the parties is reasonable. Therefore, the Panel orders the Respondent to pay a civil penalty of \$125 by July 8, 2005. This matter will not be referred to the county attorney for possible criminal charges.

S.M.M., B.J.H., K.D.S.

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<sup>[1]</sup> Affidavit of Ruehmann at ¶ 1.

<sup>[2]</sup> Affidavit of Ruehmann at ¶ 2.

<sup>[3]</sup> Postcard attached to the Complaint. In the original postcard, the text appears to range between 10 and 12 point font. As set out above, the first sentence is in 12 point and the rest of the text is in 11 point font. Italics and underlining in the original.

<sup>[4]</sup> Complainants' Ex. E.

<sup>[5]</sup> Affidavit of Ruehmann.

<sup>[6]</sup> Minn. Stat. § 211B.01, subd. 2; Minn. Laws 2004 ch. 293, art. 3 § 1.

<sup>[7]</sup> The check should be made payable to "Treasurer, State of Minnesota", and sent to the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401.

<sup>[8]</sup> Minn. Stat. § 211B.01, subd. 2.

<sup>[9]</sup> Minn. Stat. § 211B.04; Minn. Laws 2004 ch. 293, art. 3, §§ 1 & 2.